



IOWA GENERAL ASSEMBLY

Administrative Rules Review Committee

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THE RULES DIGEST

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Reference

XXVI IAB No. 21(04/14/04)
XXVI IAB No. 22(04/28/04)

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ADMINISTRATIVE SERVICES

DEPARTMENT

9:45

Early out for state employees, IAB Vol. XXVI, No. 21,
ARC 3307B, EMERGENCY.

2004 Acts, House File 2497 has enacted the latest version of the 'early out' incentive for executive branch employees willing to leave state employment. These provisions are filed emergency because employees must make application by May 21, 2004, and must terminate employment no earlier than July 2, 2004, but no later than August 12, 2004.

Under this program, an employee whose combined age and years of service totals 75 or more will receive the entire value of the employee's unused vacation plus the lesser of 75 percent of the value of unused sick leave or 75 percent the employee's annual salary. The state shall pay a portion of the combined dollar value each fiscal year, for a period of five years: 30 per cent the first year; 20 percent each year for the second through fourth years; and ten percent the

fifth year. A participating employee is not eligible for any future state employment.

ADMINISTRATIVE SERVICES

DEPARTMENT

9:45

Disposal of state personal property, IAB Vol. XXVI, No. 21,
ARC 3315B, NOTICE.

The department proposes a process for the disposal of surplus state personal property (i.e.: real property excluded). As set out in Code §8A.324 the director may dispose of personal property by two means: property that is "unfit or unnecessary" may be sold and the proceeds deposited in the general fund. If the property has little or no value, the director may enter into an agreement with a not-for-profit organization or governmental agency to dispose of the personal property. Disposal methods include sale, trade-in, or recycling. Property may also be transferred between agencies.

Once a state agency has designated property as surplus the department will determine whether it is scrap or salvageable surplus. The rules set out general standards relating to the auction of state

property, along with additional detail for motor vehicle auctions.

ECONOMIC DEVELOPMENT DEPARTMENT

10:40

Loan and credit guarantee program, IAB Vol. XXVI, No. 20, ARC 3284B, ADOPTED.

These rules establish application procedures, evaluation criteria, form of award, the contractual and compliance components for a new loan and credit guarantee program. This program was created by 2003 Acts, First Extraordinary Session, Chapter 1, §101. The legislature has appropriated some \$25 million over the next four years to fund this program; money in this program does not revert.

The purpose of this fund is to provide loan guarantees for small and medium sized businesses employing less than 200 people. The Act also targets businesses involved in life sciences, software and information technology, advanced manufacturing, value-added agriculture. An advisory group is established to identify additional eligible industries. Eligible businesses will be identified by participating financial institutions, which, along with the business, will submit the application. Individual loans or credit guarantees cannot exceed one million dollars or exceed 50 per cent of the total loan; participation by a single financial institution is limited to ten million dollars. No guarantee will extend beyond 15 years.

EDUCATIONAL EXAMINERS

11:30

Code of professional ethics, IAB Vol. XXVI, No. 21, ARC 3089B, NOTICE.

This proposal is re-drafted and re-noticed from the initial January 2004 notice of intended action. For the first time in 15 years the board is attempting to update its rules on professional ethics. The proposal establishes eight general standards, each standard is then set out in detail.

Standard I deals with the most serious ethical or professional lapses: criminal convictions, sexual conduct with a student, and child or adult abuse; this section also includes fraud in procuring the professional license. Standard I details certain criminal convictions that constitute automatic disqualification, they include violent felonies and sexual offenses involving children. Other criminal convictions, and child abuse determinations, will be evaluated on a case-by-case basis using the following criteria:

- The nature and seriousness of the crime or founded abuse in relation to the position sought;
- The time elapsed since the crime or founded abuse was committed;
- The degree of rehabilitation which has taken place since the crime or founded abuse was committed;
- The likelihood that the person will commit the same crime or abuse again;
- The number of criminal convictions or founded abuses committed; and
- Such additional factors as may in a particular case demonstrate mitigating circumstances or heightened risk to public safety.

Student abuse is also established as a standard I violation. This includes any sexual activity with a student, physical abuse of a student, or providing alcohol or drugs to a student or tolerating the use of drugs or alcohol by a student.

The remaining seven standards deal with non-criminal situations and behavior. Standard II relates to on the job alcohol or substance abuse by a licensee. Standard III relates to falsifying or misrepresenting professional credentials or student related information (e.g.: test answers). Standard IV relates to the misuse of public funds or property. Standard V relates to the violation of employment contract obligations. Standard VII requires compliance with state law governing student loan obligations and child support obligations. Standard VIII covers incompetence.

Standard VI is completely new and relates to unethical practice toward other professionals, parents, students, and the community. This standard sets out a long list of examples, including suppressing or distorting educational material; improperly denying a student access to a different

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point-of-view; repeatedly exposing the student or other members of the profession to embarrassment or disparagement; unlawful discrimination, attempting to sell goods or services to the student or the student's family for personal gain.

EDUCATIONAL EXAMINERS

11:30

Professional rights and responsibilities, IAB Vol. XXVI, No. 21, ARC 3312B, NOTICE.

This proposal is re-noticed from the initial January 2004 notice of intended action. As an adjunct to the code of professional conduct (see: above) the board also proposes a code of rights and responsibilities for licensees. These rules are identical to the rules noticed in January, except for the omission of a proposed requirement that would have obliged licensees to report ethical violations of other licensees.

The rights detailed in this proposal basically already exist, but are now set out in rule form; they include:

- a right to be licensed and endorsed as provided by law;
- a right to refuse assignments for which the educator the appropriate endorsement or approval;
- a right, subject to board and administrator authority, to exercise professional judgment in the evaluation, selection, and use of teaching methods and instructional materials appropriate to the needs, abilities, and backgrounds of each student.

The rule also sets out a list of teacher responsibilities; as an example a summary of these standards include:

- A responsibility to maintain and improve professional competence.
- A responsibility to accept only assignments for which the educator is legally authorized and to maintain a safe and effective learning environment.
- A prohibition, "without just cause", from restraining independent student learning action or denying a student access to varying points of view.
- A prohibition against discrimination based on national or ethnic origin, religion, age, sex, disability, sexual orientation, or marital status, and a prohibition against granting "any discriminatory consideration or advantage".

The rights proposed in this filing have a clear function; they can provide at least a partial defense

against professional complaints. For example, an educator cannot be disciplined for refusing to teach a course for which the educator does not have the appropriate endorsement or approval. However, it is unclear how the 16 enumerated responsibilities tie into the eight professional conduct standards set out in the ethics proposal; none of the 8 standards specifically reference either the rights or responsibilities. It is also unclear how these responsibilities will be applied, if at all, as part of the licensee disciplinary process. Lastly, the role this list of responsibilities might play in civil litigation, either against the district or the employing district, should be considered. Failure to comply with a state standard can possibly be used as evidence of negligence or liability in a judicial action.

ELDER AFFAIRS DEPARTMENT

2:30

Elder group homes, IAB Vol. XXVI, No. 20, ARC 3302B, NOTICE.

The department proposes a general re-write of existing rules regulating elder group homes. These facilities are basically descendants of the old boarding houses; they provide room, board and some personal services; they do not provide a level of assistance found in assisted living facilities. As detailed in Iowa Code Chapter 231B a group home houses three through five elders and provides such services as bathing, personal hygiene, dressing, grooming, and the supervision, but not nursing services, such as administration of self-administered medications.

All group homes must be certified by the Department of Inspections and Appeals (DIA). Certification is for three years, unless revoked for good cause. An elder group home is inspected at the time of certification and subsequently upon receipt of a complaint. The rules set out generalized staffing and physical facility standards. Each bed room must have a least 70 square feet of usable space, and a furnished common room with at least 150 square feet must be provided. Separate bathrooms are not required.

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At the time of admission, each tenant must have a service plan based on an assessment of the tenant's functional abilities. The plan must indicate the tenant's needs and requirements for assistance, services and care to be provided, and the identity of the provider. The plan must be updated at least annually.

The changing condition of the tenant is always an issue with elder facilities. The DIA may grant a waiver for an individual tenant on a "time-limited basis". Under these provisions on a "clear and convincing" showing that the manager is able to provide appropriate care and that the waiver will not jeopardize the care, health, safety or welfare of the tenant or others, the department may issue a temporary waiver.

ELDER AFFAIRS DEPARTMENT

2:30

Adult day services programs, IAB Vol. XXVI, No. 20, ARC 3288B, ADOPTED.

This filing was initially noticed in December, 2003. It establishes a new chapter 24, incorporating a number of existing provisions, plus new regulation into a single umbrella: "*adult day services programs*". Adult day care services provide under 16 hours of care and services to functionally impaired adults. Code Chapter 231D establishes a program to certify and regulate these services. These impairments can be either cognitive, psychological or physical. The format of this new certification process is similar to that for assisted living. Day care services are not set out in the Act; by rule the Department of Elder Affairs may establish various classifications of day care and the services that may be provided.

Only certified programs may receive public funding. Certification of adult day care programs is under the jurisdiction of the department of inspections and appeals (DIA). Under the Act all programs must be certified, but those programs that are voluntarily accredited by the Rehabilitation Accreditation Commission (CARF) are to be

automatically certified by the state. A program may provide only the level or type of services for which the program is certified. A program may not change its' level or type of service in such a way that would affect certification, without the approval of the department.

No person may remain in day care service if the person:

- Is bed-bound;
- Requires routine three-person assistance with standing, transfer or evacuation;
- Is dangerous to self or others;
- Is in an acute stage of alcoholism, drug addiction, or uncontrolled mental illness; or
- Is under age 18;
- Requires more than part-time or intermittent health-related care;
- On a routine basis has unmanageable incontinence.

A service plan, prepared by a health-care professional, must be developed for each person. The plan must identify the persons needs, requests for assistance and the services that will be provided.

ELDER AFFAIRS DEPARTMENT

2:30

Assisted living programs, IAB Vol. XXVI, No. 20, ARC 3299B, ADOPTED.

This filing was initially noticed in December, 2003. The rules establish certification requirements for assisted living programs and establish standards for the programs themselves. All assisted living programs must be certified by the Department of Inspections and Appeals; the certification is automatic for those programs accredited either by the Rehabilitation Accreditation Commission (CARF) or by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). Certification may be valid for up to three years. To retain this certification privilege national accreditation must be maintained at all times. Nonaccredited program must follow the certification process set out in the rules. An application for a nonaccredited program must be evaluated by the department of inspections and appeals (DIA) within 20 days; the program may be given a one year conditional certification. Re-

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certification the requires monitoring and evaluation by DIA. If successfully, the nonaccredited program may be certified for two years.

Prior to the construction or remodeling of a facility the DIA must review the blueprints to ensure compliance with the life safety code and other structural requirements. The rules set out in detail square footage and other requirements both for new and remodeled construction. Each unit must have a separate bathroom.

As with the prior rules each applicant must be evaluated by a health care professional to determine the applicants *"functional, cognitive and health"*, first, prior to admission to the program, then within 30 days following occupancy, and at least annually thereafter.

There is a provision for a waiver from the occupancy and retention criteria for an individual tenant on a *"time-limited basis"*. The rules set out a formal application process. The DIA will use three criteria to evaluate the request:

- It is the informed choice of the tenant or the tenant's legal representative, if applicable, to remain in the program; and
- The assisted living program is able to obtain the staff necessary to meet the tenant's service needs in addition to the service needs of the other tenants; and
- The waiver shall not jeopardize the health, safety, security or welfare of the tenant for whom the waiver is being requested, program staff, or other program tenants.

An appeal process for involuntary tenant transfer is also established. If the program initiates the transfer, the tenant must be given notice, a statement of the reasons behind the action, and an opportunity to appeal. If the transfer is the result of a monitoring evaluation or complaint investigation by DIA the program, the affected tenant and those providing services to the tenant will have an opportunity to provide comments and information concerning the proposed action; ultimately the tenant may file an administrative appeal through the department.

ENVIRONMENTAL PROTECTION COMMISSION

10:00

Cold water designations in streams, IAB Vol. XXVI, No. 20, ARC 3282B, NOTICE.

Under the current provisions there is a single cold water designation for streams: B(CW). It includes all cold water bodies in a single category of water bodies with temperature, flow, and other habitat characteristics which make them suitable for the maintenance of a wide variety of cold water species, including non-reproducing populations of trout and associated aquatic communities. The revision splits this into two designations. The current designation would now be called Class B(CW1)-Tier 1. The new designation: Class B(CW2)-Tier 2, which consists of streams that feed a Tier 1 stream but do not themselves do not support consistent populations of trout.

The proposal would also revise the ammonia nitrogen and dissolved oxygen criteria applicable to each proposed use designation; it also adopts by reference the *"Cold Water Use Designation Assessment Protocol"*, which establishes the criteria to designate a stream into one of the two categories. A Tier 1 stream has a maximum stream water temperature during mid-May through mid-September does not exceed 75°F, and has a stream flow is at least 0.3 cubic feet per second. Basically, a Tier 2 stream does not have the water flow to support a coldwater fish population.

ENVIRONMENTAL PROTECTION DIVISION

10:00

Iowa land recycling, IAB Vol. XXVI, No. 20, ARC 3283B, NOTICE.

In 1997 the legislature enacted Iowa Code Chapter 455H to encourage the voluntary clean up of contaminated real property. Under this legislation incentives are established to encourage competent persons to voluntarily develop and implement cleanup plans and thus recycle otherwise unusable property. The reward for such efforts is a measure of limited liability and regulatory closure, thus restoring at least some measure of the property's value.

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Any person may enroll property in the land recycling program to reduce, minimize, eliminate, clean up, control, assess, or monitor a release in order to protect the public health and safety or the environment.

The EPC now proposes to update these provisions, implementing 2002 legislation and some federal requirements. The rules have always specified statewide standards for contaminants in groundwater, soil, and surface water, based on concentrations at which normal exposure is considered unlikely to pose a threat to human health. The rules specify two means of exposure to soil based contaminants: oral and dermal.

A new addition to the assessment process will require study of the likelihood that a contaminant will migrate. The rules require that any pond, lake or stream on the site or within 300 feet of the site must be sampled and analyzed. Groundwater at the location on the site most likely to be impacted by soil contamination must also be sampled and analyzed. Lastly, soil vapors in each area that is most likely to be impacted by known groundwater or soil contamination must be sampled and analyzed for the volatile organic contaminants of concern.

The proposal introduces the concept of "cumulative risk" into the existing standards. This is basically the combined level of risk posed by exposure to a number of contaminants. The property owner must now comply with two standards, one for individual contaminants and a second for cumulative risk.

The rules also provide for notification of persons owning land adjacent to a recycling site; the EPC is required to give those persons the opportunity to obtain updates regarding the status of activities relating to the site which is enrolled in the land recycling program.

HUMAN SERVICES DEPARTMENT

9:20

Day habitation services, IAB Vol. XXVI, No. 21, ARC 3327B, NOTICE.

As required in 2003 Iowa Acts, Chapter 118 the department adds day habitation to the list of

services that may be provided as part of the Medicaid home- and community-based services waiver for persons with mental retardation. The program offers a wide array of services to teach daily living skills to the mentally retarded; these services can include training for the family. Services are limited to 10 hours per month.

HUMAN SERVICES DEPARTMENT

9:20

Foster care: transition teams, IAB Vol. XXVI, No. 21, ARC 3326B, ADOPTED.

§232.2(4)“f”, 2003 Supplement requires that a local service agency, which is preparing a case permanency plan for a child 16 years of age or older, must include a section on services to assist the child in preparing for the transition from foster care to independent living. §235.7, Supplement 2003 establishes local transition committees which are to review and approve these plans and will identify and address gaps in the services and supports needed to meet the needs of these persons. The teams are made up of specialists in such areas as education, child welfare, juvenile court services and adult services. The team review may include an interview with the client or a simple paper review.

INSURANCE DIVISION

10:30

Diminished value determinations, IAB Vol. XXVI, No. 21, ARC 3306B, EMERGENCY.

In a July, 2003 rulemaking the division introduced the concept of “diminished value” in determining the value, for insurance loss purposes, of a repaired vehicle. This concept emerged from a 1995 Iowa Supreme Court case which held that the diminished value of a repaired vehicle was part of the compensable damage, even though the repair itself restored the vehicle to pre-accident condition. Committee members were unsure whether it was necessary or even desirable to establish a general policy based on a single judicial holding. Members also noted that many issues relating to damage were decided at common law and never codified into rule. For this reason the Committee imposed a session delay on that portion of the filing relating to diminished value. During the 2004 session the

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division met with a variety of stakeholders and agreed to rescind this rule, keeping open the possibility of future rulemaking.

IOWA FINANCE AUTHORITY

10:50

Title guarantee, IAB Vol. XXVI, No. 21, ARC 3322B, NOTICE.

Pursuant to Executive Order #8 the Title Guarantee Division of the Iowa Finance Authority has reviews its' provisions relating to title guarantees and is re-writing and updating the provisions. Title insurance cannot be sold in Iowa; however; in order to sell a mortgage on the national secondary market, such insurance is a necessity. For that reason the Iowa Title Guarantee Program was created, to ensure that mortgages could be sold on the national market. The cost of a guarantee is set in an amount sufficient to permit the program to operate on a self-sustaining basis. The guarantees may be issued either by the program itself or by a participating attorney. To provide a guarantee an abstract of title must be brought up to date and a title opinion issued.

Any attorney in good standing, who maintains errors and omissions liability coverage, is eligible to participate in the program. Liability coverage is a significant requirement because in the event of a claim against a guarantee, the issuing attorney *may* be responsible, unless the defect or omission was beyond the control of the attorney.

An attorney must also complete a training program and agree to abide by the policies of the program. A participating attorney may issue a guarantee based on 'underwriting considerations'. These include:

"insuring access, reviewing gap searches, possible judgments, survey matters (including encroachments), unreleased mortgages or other liens, and any other matters disclosed by the opinion, commitment or other sources of title information."

An abstractor may also participate in the program, acting as an agent of the division. Each abstractor must qualify for participation in a manner similar to that of an attorney, and additionally must maintain and use in the preparation of abstracts an up-to-date abstract title

plant including tract indices for real estate for each county in which abstracts are prepared for real property titles guaranteed by the division.

IOWA LAW ENFORCEMENT

ACADEMY

11:00

Reserve peace officer personal standards, IAB Vol. XXVI, No. 21, ARC 2944B, ADOPTED.

Reserve peace officers are regulated in Code Chapter 80D; they are sworn peace officers who serve *"in a supplementary capacity"* to certified, regular officers. Reserve officers are not certified, but they must attend a training program as required by §80D.3.

Under the previous rule the academy set standards only for reserve officer weapons certification. This is now expanded to include personal selection standards. Applicants must be at least 18 years of age and not be addicted to drugs or alcohol. Applicants cannot have uncorrected vision less than 20/100; corrected vision must be 20/20. Hearing must be corrected to a normal standard. Applicants must pass a thorough background investigation including a fingerprint search conducted on local, state and national fingerprint files, and has not been convicted of a felony or a crime involving moral turpitude.

PAROLE BOARD

No Rep

General update, IAB Vol. XXVI, No. 21, ARC 3321B, NOTICE.

The board proposes a general re-write and update of its' entire rules section. In addition to the standard rules of organization and operation, board rules set out policy on victim notification, parole and clemency.

Under the victim notification program a victim may register by filing a written request with the county attorney. The board will determine if an qualifies as a registered victim for notification purposes. The board will notify a registered victim not less than 20 days prior to conducting a hearing at which the board will interview the inmate. The victim may submit written comment to the board or may speak at the hearing concerning the inmate's

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release. The board will notify the victim of the final determination.

Under the parole procedures the board reviews and interviews an inmate to determine whether there is reasonable probability that an inmate can be released without detriment to the community or the inmate. The board considers the best interests of society and does not grant parole or work release as an award of clemency. The board uses a variety of criteria, set out in these rules, to evaluate an inmate, and also uses psychological examinations. Based on these criteria the board determines a numerical risk assessment for each inmate. This assessment number is used to determine whether a parole is appropriate for the inmate. An inmate serving a mandatory minimum sentence is not eligible for parole.

An inmate who is on parole is under the supervision of the Department of Corrections. Parole can be revoked for good cause, following a contested case hearing.

Parole cannot be granted to a class "A" felon serving a life term, unless the Governor commutes the sentence to a term of years. When the board feels that such an inmate should be paroled, the board requests that the Governor convert the sentence to a term of years.